IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 3551 to 3553 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANJAR DAUDI VHORA JAMAT ANJAR NI MASJID, ANJAR-KACHCHH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3551 of 2003

MR NV ANJARIA for Petitioner No. 1

MR SN SHELAT, AG with MS MAITHILI MEHTA, AGP

for Respondent No. 1,3

MR NIKHILESH J SHAH for Respondent No. 2

MR ANSHIN H DESAI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 17/06/2005

ORAL JUDGEMENT

1. As facts involved in all the three petitions are similar and legal issues involved therein are also common, at the request of the learned advocates appearing for the parties, all the three petitions are heard together.

2. RULE. Service of rule is waived by learned A.G.P Ms Maithili Mehta for respondents nos. 1 and 3, by learned advocate Shri N.J. Shah for respondent no. 2 and by learned advocate Shri Anshin Desai for respondent

no. 4 in all cases.

3. Petitioners in all the petitions are wakfs who are aggrieved by implementation of town planning scheme in city Anjar so far as it pertains to their lands because by virtue of the said scheme, size and shape of their lands have been changed to their detriment.

4. It is their case that the impugned decision of reconstitution of their plots of land is bad in law because it violates the provisions of Section 51 of the Wakf Act, 1995 and as no notice was given to the petitioners by Anjar Area Development Authority (AADA) before reconstitution of their plots.

5. It has been mainly submitted by learned advocate Shri Anjaria appearing for the petitioners that according to the provisions of Section 51 of the Wakf Act, no part of any immovable property of the Wakf can be gifted, sold, exchanged, or mortgaged without prior sanction of the Board constituted as per the provisions of the Wakf Act. It has been submitted that as sanction of the Board had not been taken by the respondent authorities before reconstitution of the plots, no portion of the property belonging to the Wakf can vest in the State or any other person or authority. It has been submitted that the Wakf Act is a Central Act whereas the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to

as "the Town Planning Act") is a State Legislation. It has been submitted by him that when there is a conflict between a Central and State Legislation, the Central Legislation invariably prevails over the State legislation. In the circumstances, the provisions of the Wakf Act would prevail upon the provisions of the Town Planning Act. In the circumstances, as sanction of the Board had not been obtained by the respondent authorities, reconstitution of the plots of the petitioners made under the provisions of the Town Planning Act is bad in law.

6. He has further submitted that the Wakf Act is a special legislation made for the purpose of protection of the properties belonging to the Wakf and, therefore, the provisions of the Wakf Act would invariably prevail over the general provisions of the Town Planning Act.

7. It has been thereafter submitted by him that Article 26 of the Constitution of India gives fundamental right to the petitioners in respect of management of their religious affairs. In pursuance of the said right, the petitioners can manage their properties for religious purpose. By virtue of reconstitution of their plots, the petitioners would be losing their lands and thereby their right to manage their religious affairs would be adversely affected and, therefore, also the impugned

action of reconstitution of the plots is bad in law.

8. He has thereafter submitted that the Wakf Act was enacted in 1995 whereas the Town Planning Act was enacted in 1976. As the Wakf Act has been enacted after enactment of the Town Planning Act, the provisions of the Wakf Act would prevail over the provisions of the Town Planning Act.

9. In support of the aforestated submissions, he has also cited certain judgements, especially to show that when there is a conflict between the Central and the State Legislation, the Central Legislation would prevail over the State Legislation.

10. It has been further submitted that no notice had been given to the petitioners by the AADA before reconstituting the plots and, therefore, there is no compliance of the provisions of the Town Planning Act and, therefore, also the impugned action of the respondents is bad in law.

11. On the other hand, it has been submitted on behalf of the respondent government authorities that Section 51 of the Wakf Act and the provisions of the Town Planning Act are not having any conflict. Section 51 of Wakf Act simply puts a restriction on transfer or alienation of the wakf properties in the interest of the wakf. It has been provided in Section. 51(1) of the

Wakf Act that before effecting any gift, sale, exchange or mortgage of any immovable property belonging to wakf, prior sanction of the Board should be obtained. It has been submitted that the said sub-section deals with transfers, which are to be effected by mutawalli or the persons in charge of the properties of the wakf, but in the instant case, as per the provisions of the Town Planning Act, a plot of land which is forming part of the scheme is merely reconstituted and the final plot is allotted to the owner of the original plot. In pursuance of the aforesaid provisions of the Town Planning Act, the original plots belonging to the petitioners had been reconstituted and the final plots have already been allotted to the petitioners. In the said process, some petitioners have lost a portion of their land, but the petitioners or the owners of the lands have been benefitted because of systematic planing of the city. Moreover, they have also been compensated under the provisions of the Town Planning Act in the event of their plots being reduced in size in the process of reconstitution.

12. It has been submitted that the actions taken by the respondent authorities are just, legal and proper. It has been submitted by them that because of the devastating earthquake, which had affected Gujarat and

more particularly Anjar, Bhuj, Rapar and other places in the western part of Gujarat on 26th January, 2001, respondent No. 2 had declared its intention to make a town planning scheme in respect of Anjar. The said declaration was made under the provisions of Section 41(1) of the Town Planning Act on 4th May, 2002 and in accordance with the provisions of the said Act, the respondent authorities have already finalised the scheme for the benefit of the residents of the said city.

13. Thus it has been submitted that there is no conflict between the Central and the State Legislation and, therefore, all submissions made by the petitioners in relation thereto are absolutely irrelevant.

14. So far as the freedom with regard to managing religious affairs of the petitioners is concerned, it has been submitted that by reconstitution of the plots belonging to the petitioners, no right of the petitioners is going to be adversely affected. It has been submitted that the plots have been reconstituted so as to plan a better city after the city of Anjar had been practically destroyed because of the earthquake. The reconstitution of the plots or implementation of the Town Planning Scheme is not to take away freedom of the petitioners and, therefore, no legal or fundamental right of the petitioners has been adversely affected by virtue of

implementation of the Town Planning Scheme.

15. It has been submitted that the petitioners were duly given notices as per the provisions of the Town Planning Act and the petitioners had also replied to the notices given to them. The replies given by the petitioners were duly considered by the respondent authority and only thereafter the scheme had been finalised. The said scheme has been duly sanctioned by the State of Gujarat and, therefore, the scheme has now become part of the Town Planning Act as per the provisions of Section. 65 of the Town Planning Act.

16. Except for the respondent Board, it has been submitted on behalf of the respondents that the actions taken by the respondent authorities are just, legal and proper and they are in accordance with the provisions of the Town Planning Act. Learned advocate Shri Anshin Desai appearing for the Gujarat State Wakf Board, respondent no.4, in all the petitions, has supported the petitioners.

17. I have heard the learned advocates and have also perused the record pertaining to the petitions.

18. Looking to the facts of the case and the legal provisions contained in the Town Planning Act as well as in the Wakf Act, the prayers made in the petitions cannot be granted.

19. So as to understand the case of the petitioners, it is necessary to peruse the provisions of Section 51 of the Wakf Act. The relevant provisions of Section 51 read as under :

"51. Alienation of Wakf property without sanction of Board to be void:- (1) Notwithstanding anything contained in the Wakf deed, any gift, sale, exchange or mortgage of any immovable property which is Wakf property, shall be void unless such gift, sale, exchange or mortgage is effected with the prior sanction of the Board:

Provided that no Mosque, Dargah or Khangah shall be gifted, sold, exchanged or mortgaged except in accordance with any law for the time being in force....."

20. Upon perusal of Section 51 of the Wakf Act, it is very clear that the said provisions have been made for the benefit of the wakf. So as as to see that no property belonging to the wakf is improperly transferred in any manner to any person by the persons in charge of the wakf i.e mutawalli, the said provisions have been incorporated in Section 51 of the Act. It is pertinent to note that before the enactment of the Act, Wakf Enquiry Committee had been constituted by the government.

It was reported by the committee that very often the properties belonging to the Wakf were being improperly disposed of against the interest of the Wakf or its beneficiaries and, therefore, it was recommended that some provisions should be made so as to protect the properties of the Wakf. In that report, the committee had observed as under;

"during all our tours of the States, all sections of Muslim community have represented to us hundreds of instances of illegal alienation and transfer of Wakf properties by the mutawallis and with their connivance an equally large number of unauthorised occupation by squatters. Closed graveyards situated in urban areas have been the main targets of such clandestine transactions. We are therefore convinced that the malady has reached a stage where some drastic action is required. Unless and until immediate measures are taken, we fear that the situation may go out of control and it would be too late to save the remaining Wakf properties."

21. Thus, the recommendation of the committee was accepted and, therefore, Section 51(1) of the Act had been enacted so as to see that properties of the Wakf are not improperly disposed of by the mutawalli or other

persons. It is pertinent to note that even if there is any provision with regard to disposal of the properties of the Wakf in the deed under which the Wakf has been constituted, without sanction of the Board, it would not be open to anyone to transfer any immovable property of the Wakf by way of gift, sale, mortgage etc., in favour of any other person.

22. Looking to the provisions of Section 51(1) of the Act, it is clear that the said provisions restrain the persons managing the Wakf from dealing with the properties of the Wakf. The said provisions do not apply when by virtue of any legal provision any change is effected in the immovable properties of the Wakf.

23. It is pertinent to note that as per the provisions of Section 91 of the Wakf Act, in the event of any property of the Wakf being acquired by the government under the provisions of the Land Acquisition Act, the Board is required to be heard so as to see that the Wakf gets proper compensation. The provisions of Section 91 of the Wakf Act also do not prevent any authority from acquiring land belonging to the Wakf. Thus the land belonging to the Wakf can be acquired but so as to see that the Wakf is adequately compensated, the Board is required to be heard in the matter of determination of compensation. Had the intention of the Legislature been

to see that the property of the Wakf can not be transferred to anybody, including to the Government, Section 91 would not have been incorporated or it would have been stated in the said Section that even the government has no power to acquire the property belonging to the Wakf.

24. It is thus clear that there is no embargo on the power of the government with regard to acquisition of the land belonging to the Wakf. Similarly, the plea of the petitioners that the lands belonging to the Wakf can not be made subject to the provisions of the Town Planning Act so as to make any change in the size or shape of the land to the detriment of the Wakf cannot be accepted. The only provision incorporated in the Act is with regard to giving hearing to the Board in the event of acquisition of the land belonging to the Wakf. Thus, it cannot be said that the land belonging to the Wakf cannot be acquired at all or it cannot be transferred.

25. In the instant case, for the purpose of betterment of city Anjar, the town planning scheme has been made and implemented and so as to have better and wider roads under the scheme, plots belonging to many of the residents of Anjar and the petitioners have been reconstituted for the larger benefit, not only of the society but also of the petitioners. As a result of

implementation of the scheme, the petitioners, though might be getting little less land in pursuance of the scheme, but their plots would be better for the reason that they will be having a regular shape and will be having access to wider roads.

26. Looking to the aforestated legal and factual position, all the averments, which pertain to conflict between the Central and the State Legislation are of no importance, and, therefore, I do not deal with any of the judgements referred to by the petitioners about the said conflict.

27. So far as the averments pertaining to the notices are concerned, it is clear from the affidavits filed on behalf of AADA that notices had been given to the petitioners and even they were replied to by the petitioners. The petitioners had not only replied to the notices but had also raised several objections, which were duly considered by the respondent authorities. Thus, it cannot be said that without issuance of any notice or without giving any intimation to the petitioners, the provisions of the Town Planning Act had been implemented.

28. According to the provisions of Section 65 of the Act, upon sanction of the scheme, the scheme becomes part of the Town Planning Act and the scheme becomes final.

Looking to the settled legal position, once the scheme has been sanctioned and has become part of the Act, it should not be interfered with by the Court unless there is a special reason and in the instant case, there does not appear to be any reason for interfering with the said scheme especially when the said scheme has been made with an intention to see that the city is properly planned and in preparation of the said scheme no illegality or irregularity has been committed by the respondent authorities.

29. For the reasons stated hereinabove, it is quite clear that no legal or fundamental right of the petitioners has been violated by any of the respondents and the petitioners are therefore not entitled to any of the reliefs prayed for in the petition and, therefore, the petitions are rejected. Rule is discharged in each petition with no order as to costs.

30. At this stage, learned advocate Shri Anjaria appearing for the petitioners has submitted that the ad-interim relief, which had been granted earlier be continued for six weeks. Learned advocate Shri N.J. Shah appearing for Anjar Area Development Authority as well as learned A.G Shri S.N. Shelat appearing for the State have objected to continuation of ad-interim relief. Looking to the facts of the case, in my opinion, three

weeks time should be sufficient and, therefore, it is directed that the ad-interim-relief granted earlier shall continue up to 8th July, 2005.

(A.R. DAVE, J.)

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